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No. 03-1645

Supreme Court, U.S.
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In The

Supreme Court of the United States

IN RE RONALD L. GREEN

On Petition For Writ Of Mandamus

PETITION FOR REHEARING

RONALD L. GREEN,
Petitioner, *In Proper Person*
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INTRODUCTION

The decision of the Ninth Circuit should not be allowed to stand because it incorrectly suggests that discrimination claims brought under the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and the Civil Service Reform Act are not entitled to a judicial trial *de novo* after those claims are first raised in an administrative proceeding.

In addition, the Ninth Circuit's decision should not be allowed to stand because it suggests a federal employer is above the law and can conduct an unlawful psychiatric examination to question and then penalize a federal employee for exercising his Constitutional and civil rights.

REASONS FOR GRANTING THE WRIT

I. AS A MATTER OF LAW, WHEN CONGRESS ACTS TO CONTROL THE CONDUCT OF THE FEDERAL GOVERNMENT, THE FEDERAL COURTS MUST FOLLOW THE WILL OF CONGRESS.

There is a disturbing trend in the federal courts to allow Government defendants, especially in cases of discrimination, to avoid liability for their unlawful conduct no matter how egregious. This trend has caused an erosion of public confidence in the rule of law and undermines the Constitution and the legal principles that have made this country great and kept it free.

The Rehabilitation Act passed by Congress and signed into law by the President prohibits a federal employer from discriminating against an applicant because he or she has a history of disability. (*School Board v. Arline*, 480 U.S. 273, 107 S. Ct. 1123, 1126-1127, (1987)). The Rehabilitation Act has not been repealed.

When Ronald L. Green ("Green") applied for re-employment with the United States Postal Service ("Postal Service") in 1997, it is undisputed that the Postal Service required Green to submit to a psychiatric examination only because he has a history of disability. No other applicant was required to submit to the examination that was also prohibited by, *inter alia*, the Office of Personnel Management ("OPM"). (5 C.F.R. § 339.301(e)).

Moreover, the Civil Rights Act that was also passed by Congress and signed into law by the President prohibits a federal employer from retaliating against an employee due to his or her protected activities. (5 U.S.C.S. § 2000e-3). The Civil Rights Act has also not been repealed.

It is undisputed that the Postal Service refused to rehire Green because its psychiatrist considered his prior protected activities and diagnosed Green has an alleged personality disorder that compels him to engage in Title VII and other Constitutionally protected activities. (Petition at A-70).

A private employer facing similar indisputable facts and similar charges under the Americans With Disabilities Act ("ADA") would have capitulated. However, the Postal Service, like other federal employers with their hands in the public purse and free representation by the public office of the United States Attorney, chose to take its chances and unnecessarily burden the overextended courts.

Despite the undisputed facts and the controlling law, the Postal Service chose to take its chances in federal court because it believed it could escape liability by manipulating the judicial system with erroneous and misleading arguments. Regrettably, it has done so.

The arguments were ethically impermissible because the agency and the United States Attorney knew or should have known that the discrimination claims at issue were entitled to a judicial trial *de novo* and the arguments for preclusion did not apply because the "statutory purpose to the contrary is evident." (*Astoria Federal Savings & Loan Association v. Solimino*, 501 U.S. 104, 108 (1991)).

Green's discrimination claims were entitled to a judicial trial *de novo* in federal district court under the Civil Rights Act, the Rehabilitation Act and the Civil Service Reform Act and the district court erred as a matter of law when it decided in favor of the Postal Service by applying res judicata based upon an administrative decision that dismissed the case for lack of subject matter jurisdiction and did not consider the discrimination claims at issue. It was further error for the Ninth Circuit to affirm the decision on collateral estoppel grounds and not consider the merits of the discrimination claims.

The Ninth Circuit and the district court did not follow and apply the controlling statutes and case law, including prior Supreme Court mandates requiring a judicial trial *de novo*, because the defendant in this case is a Government agency. And the Government has proffered no legally defensible position for its unlawful and discriminatory acts.

For these reasons, this Honorable Court should exercise its discretionary powers and grant the writ of mandamus because the Court's appellate jurisdiction is required in these exceptional circumstances where, only because the defendant is a Government employer, the courts below did not follow and apply the controlling law as required by the rule of law.

II. AS A MATTER OF LAW, A JUDICIAL DECISION THAT INFRINGES UPON THE CONSTITUTIONAL RIGHTS OF AN INNOCENT CITIZEN CANNOT STAND.

In the Civil Rights Act, the Rehabilitation Act and the Civil Service Reform Act, Congress provided a specific statutory process for adjudicating discrimination claims and that process includes the exhaustion of administrative remedies prior to a judicial trial *de novo* in federal district court. Congress specifically chose not to provide the Court of Appeals for the Federal Circuit ("Federal Circuit") jurisdiction over discrimination claims. (5 U.S.C.S. § 7703(b)).

Incredibly, in the administrative procedures below, the Merit Systems Protection Board ("Board") failed to consider the discrimination claims at issue when it dismissed the case for lack of subject matter jurisdiction. After it determined the Board had subject matter jurisdiction, the Federal Circuit failed to remand the case to the Board for a decision on the merits as the law requires. The Federal Circuit then exceeded its jurisdiction by considering the merits of a case involving unlawful discrimination. Thereafter, the district court and the Ninth Circuit failed to provide the judicial trial *de novo* required under the statutes. None of the aforementioned forums considered the merits of the discrimination claims at issue.

Because the procedural process prescribed by Congress under the referenced statutes was not followed and Green never received a full and fair opportunity to fully litigate the merits of the discrimination issues, his constitutional right to due process of law was violated.

In addition, because the district court required Green to file a second administrative complaint with the Postal

Service in order to exhaust his administrative remedies after the Board dismissed the case, but the district court failed to provide Green with the judicial trial *de novo* required under the statutes after he did so, Green's constitutional right to equal protection under the law was also violated.

However, perhaps the most egregious infringement of Green's constitutional rights occurred when the federal employer conducted the intrusive psychiatric examination that was already prohibited by, *inter alia*, OPM and the Rehabilitation Act.

The psychiatric examination was used as a pretext by the Postal Service in order to violate Green's right to be secure against an unreasonable search by making impermissible inquiries and then criticizing and penalizing Green for exercising his civil rights and his Constitutional right to freedom of speech and freedom to petition the Government for a redress of grievances. (Petition at A-70).

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, because the procedural history clearly demonstrates the petitioner was denied the requisite judicial trial *de novo* required under the statutes and the courts below also failed to apply the controlling law to the undisputed facts, the Court should defend the Constitution and grant this petition and direct the Ninth Circuit to provide the judicial trial *de novo* and thereafter apply the controlling law to the undisputed facts in this case.

RESPECTFULLY SUBMITTED this 27th day of October, 2004.

RONALD L. GREEN
Petitioner, *In Proper Person*

CERTIFICATION

I hereby certify that this Petition for Rehearing is restricted to the grounds specified in paragraph 2 of Supreme Court Rule 44 and is submitted in good faith and not for delay.

Ronald L. Green